

## **Exhibit B**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 1794  
Examiner : Kelly J. Bekker  
Applicants : Cheree L. B. Stevens et al.  
Appln. No. : 10/629,991  
Filing Date : July 30, 2003  
Confirmation No. : 3726  
For : EXTERNAL COATING COMPOSITION FOR TOASTER  
PASTRIES AND OTHER PASTRY PRODUCTS

DECLARATION OF CHEREE L. B. STEVENS

I, Cheree L. B. Stevens, do hereby declare as follows:

1. I am the Director of Technical Services for Advanced Food Technologies, assignee of the present patent application. I graduated from the College of Bakery & Food Technology at South Glamorgan Institute with a Food Technology Degree. I have had over 20 years experience in the food science industry. I have had extensive experience specifically in the food coatings area for over 14 years, since 1992.

2. From 1984 to 1986, I was the Production Supervisor for W. L. Miller's & Sons, where I managed employees in the production of bacon and ham and reduced pack weight problems through controls developed for the cook process. From 1986 to 1989, I was the Product Development Technologist for Reckitt and Colman, where I formulated twelve varieties of soft drinks using three different packaging technologies that created at least \$5 million in profit. I also developed matches to competitor products increasing market share and conducted supplier quality audits. From 1989 to 1991, I was the Senior Research Scientist for British Sugar Corporation, where I developed a soluble fiber-enriched soft drink and soluble fiber enriched meat additive using beet fiber. I also developed a novel food product using 'horizon' technology, initiated government petition for acceptance, commissioned a new manufacturing facility that ran above efficiency and utilized total quality management (TQM) and team dynamics to ensure project probability. From 1992 to 1994, I was a Food Scientist for McCain Foods, Inc., where I developed various products, including a French fry that holds over 20 minutes under a heat lamp. I also assisted in launching a specialized coated French fry line resulting in

\$200 million of additional sales, commercialized a signature French fry line resulting in \$30 million sales, commercialized the first flavored marinade French fry line valued at \$10 million and obtained patent protection, and developed specification and other procedures to obtain product launches. From 1994 to 1998, I was the Product Process Specialist for the Pillsbury Company, where I was responsible for ensuring process and packaging parameters. Among other responsibilities, I also implemented SPC for granule processing and packaging resulting in a 90% reduction in off-grade and reducing overweight pouches, developed Allergen control program, created SOP's for process and packaging operators, and audited BOMs and GMPs for accuracy. From 1998 to 1999, I was the Manager of Technical Services for Basic American Foods, where I managed the Plant Sanitarian, the Quality Assurance Lab Supervisor, 11 technicians and 6 sanitation personnel for potato dehydration, blending and packaging operation. I was also responsible for all Quality Assurance, developing the "Best Practices" identified by Pillsbury and Tricon audits, received Supplier of the Year awards, and developed Corrective Action system.

3. From 1999 to date, I have served as the Director of Technical Services for Advanced Food Technologies, Inc. A copy of my resume is attached hereto as Exhibit 1.

4. I am a named inventor of U.S. Patent Application Serial No. 10/629,991.

5. I have carefully reviewed the Office Action mailed September 28, 2009, in United States Patent Application Serial No. 10/629,991, and the references cited therein, including Lazard et al. (EP 0547551 A1).

6. On December 23, 2009, I personally conducted experiments regarding consistency of the coating of the coating compositions of the Lazard et al. published application.

7. In conducting the experiments, the following formulas were prepared to determine the amount of water necessary to form a wet slurry coating using the components of the '551 publication to Lazard et al.:

TEST	INGREDIENTS				
	Gelatin (g)	Midsol 35™ (g) (Modified Wheat starch)	Tapioca Dextrin (g)	Water (g)	Total (g)
Test A	5.0	70.0	20.0	5.0	100.0
Test B	5.0	65.0	20.0	10.0	100.0
Test C	5.0	60.0	20.0	15.0	100.0
Test D	5.0	55.0	20.0	20.0	100.0
Test E	5.0	50.0	20.0	25.0	100.0
Test F	5.0	45.0	20.0	30.0	100.0
Test G	5.0	40.0	20.0	35.0	100.0
Test H	5.0	35.0	20.0	40.0	100.0
Test I	5.0	30.0	20.0	45.0	100.0
Test J	5.0	25.0	20.0	50.0	100.0
Test K	5.0	20.0	20.0	55.0	100.0
Test L	5.0	15.0	20.0	60.0	100.0

8. The prepared formulas were photographed (attached hereto as Exhibit 2) and had the following consistencies:

TEST	CONSISTENCY
Test A	dry white powder
Test B	dry powder with dough lumps
Test C	dry powder with dough lumps
Test D	dry powder with dough lumps
Test E	dry powder with dough lumps
Test F	dry powder with dough lumps
Test G	dry powder with dough lumps
Test H	dry powder with dough lumps
Test I	hard dough
Test J	hard dough
Test K	liquid
Test L	liquid

The formulas containing water at a level below 55% did not form a wet slurry. As such, based upon these experiments, at least 55% water must be used to form a wet slurry using the components of the '551 publication. Whether applied as a dry coating, if you could even coat a toaster pastry with the dry powder with dough lumps or the hard dough, or a wet slurry, the composition of the Lazard et al. application as shown in Exhibit 2 results in an opaque and obviously visible coating.

9. On December 24, 2009, I personally conducted a series of experiments to demonstrate the differences between the coating composition of Lazard et al. (the '551 publication) and a coating composition of the present application.

10. To do so, I prepared the following formulas from Table XIII of the Lazard et al. publication with varying levels of gelatin and Midsol 35™:

Ingredient	Test A		Test B	
	Percent by weight	Batch weight (g)	Percent by weight	Batch weight (g)
Gelatin	5.0	25.0	10.0	50.0
Midsol 35™	20.0	100.0	15.0	75.0
Tapioca dextrin	20.0	100.0	20.0	100.0
Water	55.0	275.0	55.0	275.0
<b>TOTAL</b>	<b>100.0</b>	<b>500.0</b>	<b>100.0</b>	<b>500.0</b>

11. I prepared Lazard's edible films for Tests A and B by adding ingredients to hot water and then heating the mixture to 80°C to form a slurry. I prepared the solution using a beaker sitting on hot plate.

12. Non-frosted Kellogg Pop Tarts Toaster Pastries (Lot APR 26 10 GB7) were sprayed with tepid water on both sides to reconstitute the surface so that the coating could adhere to the toaster pastries and the damp toaster pastries were allowed to sit for a few minutes.

13. The damp toaster pastries were laid in a pool of edible film (solution @ 80°C), excess coating was drained, and the coated pastries were placed on foil lined tray with oil sprayed on it.

14. I prepared the following formulas of the present invention as found in Example 1, Formula 1 of the present application with 5% gelatin added to Test C:

Ingredient	Test C		Control	
	Percent by weight	Batch weight (g)	Percent by weight	Batch weight (g)
Midsol 35™ (modified wheat starch)	20.37	101.85	23.37	116.85
Sodium acid pyrophosphate 28	0.83	4.15	0.83	4.15
Sodium bicarbonate	0.57	2.85	0.57	2.85
Corn dextrin	12.72	63.60	14.72	73.60
Sugar	6.44	32.2	6.44	32.2
Xanthan gum	0.07	0.35	0.07	0.35
Gelatin	5.0	25.0	0.0	0.0
Water	54	270	54	270
TOTAL	100.0	500.0	100.0	500.0

15. I prepared the coating of the present invention for Test C by adding ingredients to 55°F water and heating the mixture to 80°F to form a slurry. I prepared the solution using a beaker sitting on hot plate.

16. I prepared the coating of the present invention for the Control Test by adding ingredients to 55°F water. The clear coat of the Control Test did not require heat to form a slurry.

17. Non-frosted Kellogg Pop Tarts Toaster Pastries (Lot APR 26 10 GB7) were sprayed with tepid water on both sides to reconstitute the surface so that the coating could adhere and the toaster pastries and the damp toaster pastries were allowed to sit for a few minutes.

18. The damp toaster pastries were laid in a pool of coat moisture barrier wet slurry, excess coating was drained, and the coated pastries were placed on foil lined tray with oil sprayed on it.

19. The coated pastries for Tests A, B, C, and Control were baked at 350°F for 15 minutes, allowed to cool and then photographed. The photograph showing the resulting coatings attached to this Declaration as Exhibit 3.

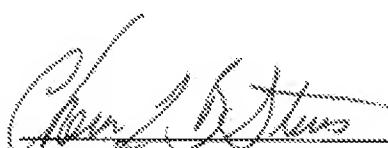
20. As demonstrated by the above experimental results shown in Exhibit 3, the toaster pastries coated with the coating composition of Table XIII of Lazard et al. (Tests A and B) exhibited a coating that did not adhere to the surface of the pastry and raised the skin of the pastry during the baking process. The baked coatings were thick, messy, opaque, and clearly visible and resulted in a pastry product that no longer resembled a toaster pastry.

21. As demonstrated by the above experimental results shown in Exhibit 3, the toaster pastry coated with the coating of the present invention with added gelatin, a component of Lazard, (Test C) resulted in a coating that did not adhere to the surface of the pastry and raised the skin of the pastry during the baking process. The film was tough, plastic-like, visible, and opaque and lifted away from the pastry surface resulting in a pastry product that no longer resembled a toaster pastry. The gelatin had a significantly adverse effect on the coating composition and resulted in a practically inedible product.

22. As demonstrated by the above experimental results shown in Exhibit 3, the toaster pastry coated with a clear coating composition of the present invention (Control Test) resulted in a coating that adhered to the toaster pastry and was substantially clear and invisible. As a result, the consumer would not readily notice that the coated toaster pastry was even coated at all.

23. All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true, and further, these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

  
Date

  
Cheree L. B. Stevens

# **Exhibit 1**

# • CHEREE L. B. STEVENS

200 Cobblestone Lane • Idaho Falls, Idaho 83404 • (208) 529-9027

## OBJECTIVE

Management position in food-related quality and R&D

## PROFESSIONAL SUMMARY

Manager with 15 years of Quality, R&D and Operations management experience. Demonstrated ability to structure innovative and unique solutions to complex problems. Proven ability to develop quality teams that motivate others to their peak performance and reduce execution time.

## CAREER HISTORY

### BASIC AMERICAN FOODS

Shelly, Idaho

1998 ~ 1999

#### MANAGER, TECHNICAL SERVICES

- Managed Plant Sanitarian, QA Lab Supervisor and 11 technicians, 6 sanitation personnel for a 7 day 24 hour potato dehydration, blending and packaging operation. (8 flake drums, 4 granule lines, slice line, agglomerate line, 9 packaging lines)
- Responsible for all Quality Assurance issues including:
  - Customer required quality systems (Pillsbury, Tricon, Sysco)
  - Food Safety, Allergens, HACCP, GMP's, Continuous Improvement, SPC, Sanitation
  - Third party audits, including Kosher certification
- Developed "Best Practices" identified by Pillsbury and Tricon audits, received Supplier of the Year awards.
- Developed Corrective Action system

### THE PILLSBURY COMPANY

1994 – 1998

Shelly, Idaho

#### PRODUCT PROCESS SPECIALIST

- Responsible for ensuring process and packaging parameters met specified limits.
- Implemented SPC for granule processes resulting in a 90% reduction in off-grade
- Implemented SPC for granule packaging lines reducing over weight pouches
- Developed Allergen control program
- Created SOP's for Process and Packaging Operators, trained operators and QA techs
- Communicated Quality and Production data to management and hourly employees. Consistently met business goals relating to quality, cost and safety
- Audited BOMs for accuracy
- Conducted GMP audits, responsible for corrective actions
- Member of Granule HACCP Team, Product Recall Team (conducted mock recalls quarterly)
- Reduced costs in several areas including ingredient usage, off-grade reduction, reformulations, labor
- Created quality programs to meet customer required quality systems.

### McCAIN FOODS, INC.

1992 – 1994

Frozen Foods Division – Othello Washington

#### FOOD SCIENTIST

- Developed a 1-minute French fry that holds over 20 minutes under heat lamp.
- Assisted in launching a specialized coated French fry line, resulting in 200MM additional sales pounds.
- Commercialized signature French fry line, resulting in \$30,000,000 sales.
- Commercialized first flavored marinade French fry line valued at \$10,000,000, obtaining patent.
- Developed specifications, nutrition, process procedures, and analytical testing to obtain product launches

# **CHEREE L.B. STEVENS**

**BRITISH SUGAR CORPORATION**

Sugar Products Division - Norwich, England

1989 - 1991

## **SENIOR RESEARCH SCIENTIST**

- Developed a soluble fiber-enriched soft drink and soluble fiber enriched meat additive using beet fiber.
- Developed a novel food product using "horizon" technology and initiated government petition for acceptance.
- Commissioned a new manufacturing facility and ran at above efficiency.
- Utilized TQM, and team dynamics to ensure project probability.

## **RECKITT AND COLMAN**

Colman's of Norwich, Norwich, England

1986 - 1989

## **PRODUCT DEVELOPMENT TECHNOLOGIST**

- Formulated 12 varieties of soft drinks using three different packaging technologies, \$5MM profit
- Developed matches to competitor products, increased market share
- Conducted Supplier Quality audits

## **W.L. MILLER'S & SONS**

Meat Products Division - Poole, England

1984 - 1986

## **PRODUCTION SUPERVISOR**

- Managed 10 hourly employees in the production of bacon and ham
- Reduced pack weight problems through controls developed for the cook process.

## **EDUCATION**

South Glamorgan Institute

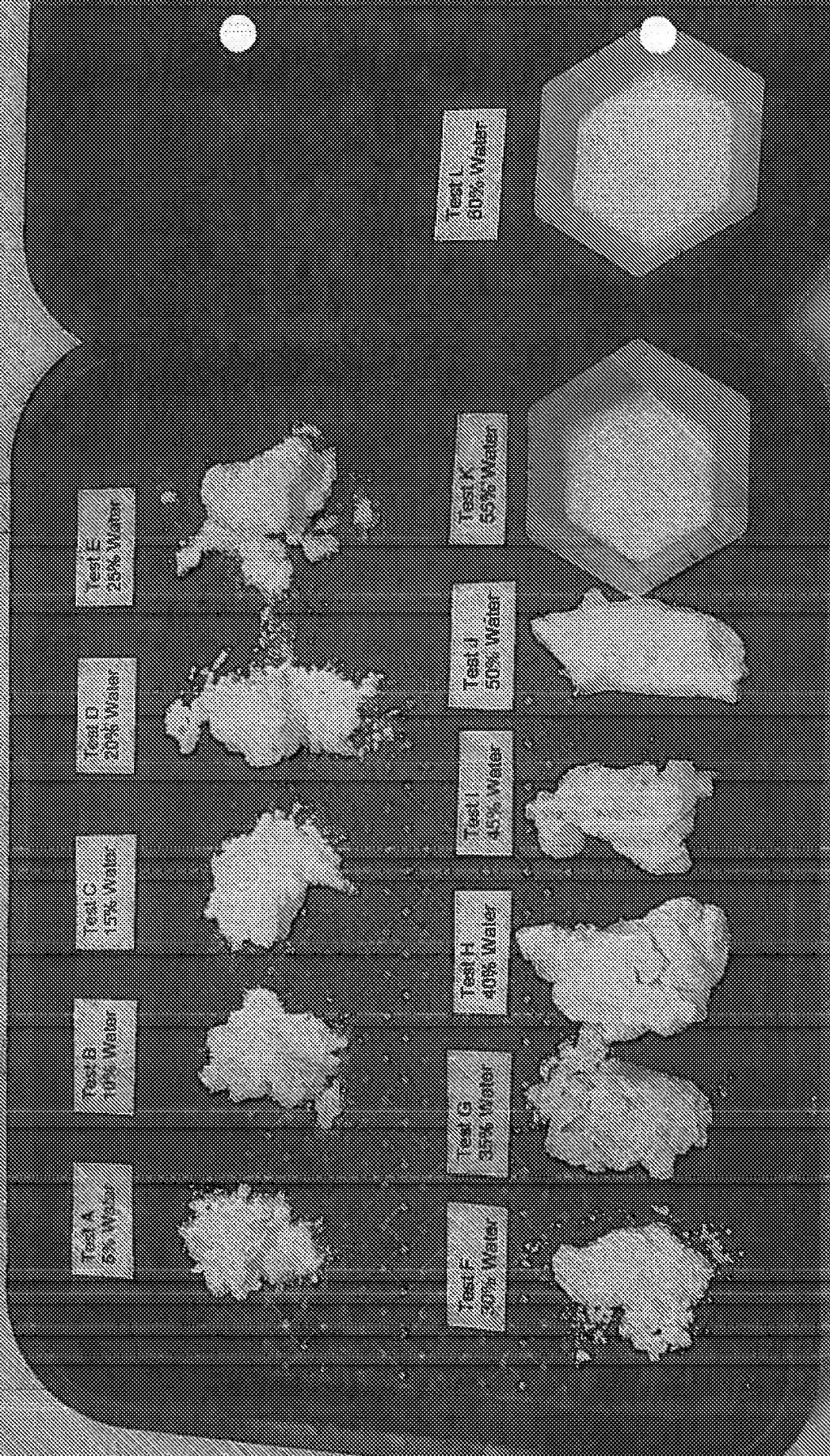
The College of Bakery & Food Technology

Higher National Diploma

(Food Technology)

**REFERENCES FURNISHED UPON REQUEST**

## **Exhibit 2**



## **Exhibit 3**

Sigmarus Clear Coast

Test B

Test C

Test A